

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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REPORT AND RECOMMENDATION

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Barbara R. Burns,

Plaintiff,

vs.

Office of Attorney General,
State of Minnesota and its
inferior political subdivisions;
City of Apple Valley, its
employees and agents; Dakota
County, its employees and
agents; City of Richfield; City
of Richfield Police Department;
Thomas FitzHenry; Hennepin
County, its employees and agents,
and Steven Sutton,

Defendants.

Civ. No. 05-858 (PJS/RLE)

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In a Report and Recommendation dated March 8, 2007, see, Docket No. 130, we concluded that the Plaintiff was ineffective in her service of process upon the Defendant Office of Attorney General, State of Minnesota and its inferior political subdivisions (“OAG”), and therefore, the Plaintiff’s Motion for Entry of Default

Judgment against the OAG should be denied. We also considered whether, under Rule 4(m), Federal Rules of Civil Procedure, the Plaintiff should be afforded further time to effect service upon the OAG, and concluded, for several reasons, that such an extension of the time for service of process would be inappropriate. As a consequence, “we recommend[ed] that the OAG be dismissed from this action,” but without prejudice. Id. at 17-18. Inadvertently, we did not include in our proposed directives, that a dismissal without prejudice should be entered in favor of the OAG. Id. at 24-25.

Over the Plaintiff’s Objection to that Report and Recommendation, the District Court, the Honorable Patrick J. Schiltz presiding, adopted the Report and Recommendation, but the District Court also overlooked the directive for an entry of dismissal without prejudice as to the OAG. See, Docket No. 208, at 2-3.

As a matter of housekeeping, we now recommend that an Order of Dismissal, without prejudice, be entered in favor of the Defendant Office of Attorney General, State of Minnesota and its inferior subdivisions, owing to the lack of personal jurisdiction over that Defendant.

NOW, THEREFORE, It is --

RECOMMENDED:

That an Order of Dismissal, without prejudice, be entered in favor of the Defendant Office of Attorney General, State of Minnesota and its inferior subdivisions, owing to the lack of personal jurisdiction over that Defendant.

Dated: July 30, 2008

s/Raymond L. Erickson

Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than August 15, 2008**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete

transcript of that Hearing **by no later than August 15, 2008**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.